

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF PROPOSED RULEMAKING**

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)(2008 Supp.), hereby gives notice of her intent to adopt amendments to Chapter 30 of Title 5 of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed rule sets forth the procedures regarding resolution meetings and due process hearings and decisions following the filing of an administrative due process complaint against a public education agency.

Section 30 of Chapter 30 of Title 5 of the DCMR is amended as follows:**3030 Resolution Meeting, Due Process Hearing, and Final Decision Procedure**

3030.1 Resolution meeting. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the public education agency ("agency") shall convene a resolution meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process complaint. The resolution meeting need not occur if the parent and the agency agree in writing to waive such meeting, or agree to use the mediation process described in § 3028 of this Chapter. The resolution meeting:

- (a) Shall include a representative of the agency who has decision making authority on behalf of such agency;
- (b) May not include an attorney of the agency unless the parent is accompanied by an attorney; and
- (c) Must provide the parent of the child an opportunity to discuss their due process complaint and the facts that form the basis of the due process complaint so that the LEA has an opportunity to resolve the dispute that forms the basis of the due process complaint.

3030.2 Relevant Team Members. The parent and the agency shall determine the relevant members of the IEP Team to attend the resolution meeting.

3030.3 Resolution period. If the agency has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

- 3030.4 Except as provided in § 3030.8, the timeline for issuing a final decision under § 3030.11 begins at the expiration of the 30-day period identified in § 3030.3.
- 3030.5 Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent, who has filed a due process complaint, to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- 3030.6 If the agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 3026.4), the agency may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
- 3030.7 If the agency fails to hold the resolution meeting specified in § 3030.1 within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
- 3030.8 Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in § 3030.11 starts the day after one of the following events:
- (a) Both parties agree in writing to waive the resolution meeting;
 - (b) Either the mediation or resolution meeting starts but, before the end of the 30-day period, the parties agree in writing that no agreement is possible; or
 - (c) Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or agency withdraws from the mediation process.
- 3030.9 Written Settlement Agreement. If a resolution to the dispute is reached at the meeting described in § 3030.1, the parties shall execute a legally binding agreement that is:
- (a) Signed by both the parent and a representative of the agency who has the authority to bind such agency; and
 - (b) Enforceable in any State court of competent jurisdiction or in a District Court of the United States.

- 3030.10 Agreement Review Period. If the parties execute an agreement pursuant to § 3030.9, either party may void such agreement within three (3) business days of the agreement's execution. The party who voids the agreement shall provide written notice to all other parties to the agreement.
- 3030.11 Due Process Hearing. Not later than forty-five (45) days after the expiration of the thirty (30) day resolution period or any adjusted time period described in § 3030.8:
- (a) A final decision shall be reached in the hearing; and
 - (b) A copy of the decision shall be mailed to each of the parties, or alternatively may be transmitted electronically or by facsimile if all parties to the due process complaint consent.
- 3030.12 An impartial hearing officer may, for good cause shown, grant specific extensions of time beyond the periods set forth in § 3030.11 at the request of either party.
- 3030.13 Hearing Officer Determination (HOD). The HOD must be in writing. The hearing officer must include the following in the HOD:
- (a) The identity of the parties;
 - (b) The identity of the student, which shall include the student's name, student ID number, date of birth, and attending school;
 - (c) The case number;
 - (d) Findings of fact and conclusions of law, separately stated;
 - (e) The final determination;
 - (f) What must be done by each party, where applicable, to carry out the decision, including the establishment of timelines for each step or action, and by whom;
 - (g) Any appeal rights; and
 - (h) The Hearing Officer's signature, which may be designated by electronic signature.
- 3030.14 The burden of proof shall be the responsibility of the party seeking relief; either the parent of a child or the agency. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine

whether the party seeking relief presented sufficient evidence to meet the burden of proof.

3030.15

After deleting personally identifiable information from hearing decisions, the Student Hearing Office of the District of Columbia shall transmit the findings and decisions to the SEA Advisory Panel and make the findings and decisions available to the public.

Persons wishing to comment on this proposed rule should submit their comments in writing to Kerri L. Briggs, Ph.D., Acting State Superintendent of Education, 441 4th Street, N.W., Suite 350N, Washington, D.C. 2001, Attn: Adam Thibault. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the D.C. Register. Copies of this rulemaking amendment and related information may be obtained by writing to the above address, by calling the Office of the State Superintendent of Education at (202) 727-6436, or on the OSSE website at www.osse.dc.gov.